



## **Missouri Department of Natural Resources**

### **Missouri Clean Water Commission Conference Call December 28, 2001**

Participating: Commissioners Janice Greene, Arthur Hegi, Cosette Kelly, Davis Minton and Chairman Herrmann; Deborah Neff, Assistant Attorney General; Phil Schroeder, Water Pollution Control Program Permits Section Chief; Diane Waidelich, Commission Secretary, Robert Brundage, Mo-Ag Industries and Premium Standard Farms.

Mr. Schroeder explained this conference call is being conducted due to the permitting timelines in 644.051.12(4). The language states that no later than December 31, 2001 the commission shall promulgate regulations defining shorter review time periods than the timeframes established in subsection (1) of this subsection when appropriate for different classes of construction and operating permits. Mr. Schroeder noted that same statute also requires the department to report to the commission on a semi-annual basis describing the different classes of permits and the number of days it has taken the department to issue each of those permits.

Mr. Schroeder stated staff needs to know if the commission feels the permitting timelines need to be adjusted. In addition, the requirement to report to the commission on the time it has taken to issue these permits has to be satisfied.

Mr. Schroeder stated the graph that was faxed to the commission shows the amount of time it is taking the department to review the various types of permits. The graph represents about 1,460 permits (499 construction permits, 628 general permits and 333 site-specific permits) issued during fiscal year 2001. Mr. Schroeder noted the chart shows that if the 180-day timeline was targeted for issuing construction and site-specific permits, about 77% of the construction permits made it within the 180-day timeline with about 23% not being issued in that time. The site-specific permits issued number 37% within the 180-day deadline whereas 63% were issued outside of that timeline. The statute requires processing of general permits within 60 days. The graph indicates that 72% of these permits made it within the timeline and 28% did not. Mr. Schroeder clarified this graph represents the amount of time it took from the date the application was initially received to the time that final action was taken. If the timeline is defined as being the entire period, then those percentages apply. Staff looks at the timeline as being from the date an application is complete or when the last application submittal is made to the department. That is not represented by this graph. Mr. Schroeder noted the graph could be misleading depending on how the statute is interpreted.

Chairman Herrmann reiterated the point he made at the December meeting, and in previous discussions on this issue, that you can't take the total time from the period when the application was first submitted and consider that as being 180 days from that point. It is when all the questions are answered and all conditions are satisfied.

Commissioner Minton asked if information is available on what timeline the permits were processed on once the applications were considered complete.

Mr. Schroeder responded this information is not available. He noted this is the only data available showing any period of time spent doing permit reviews. The Permit Action Management System being developed is being written so that in the future this will be defined.

Commissioner Minton asked what happens if staff has not completed review of an application after the 180 and 60-day timelines have passed.

Mr. Schroeder responded if a permit has not been addressed within the timeline, the department is required to refund the permit fee associated with that application by statute. He recommended that the commission not direct the department to make any specific changes at this time. Mr. Schroeder stated staff believes there may be instances in the future where this could be done, but without sufficient data on how staff can perform under the current timelines, staff does not want to make a guess at what can actually be achieved. He noted staff is issuing a good percentage of the general permits under the 60-day deadline. Mr. Schroeder noted the following circumstances where adjustments should be made: 1) a new procedure is defined that allows for the thorough review of applications within a shorter period of time than is currently prescribed by the statute; 2) when adequate funding and resources are in place to support the new procedure; and 3) when an effective tracking system is in place to provide reliable information on the status of all applications from the date of receipt to final action and a clear record of the time used by the department staff during the review period. Mr. Schroeder noted staff is trying to get all of these criteria satisfied so that they can more definitively define what consistent performance can be. Once this is done, staff may be able to come back to the commission and offer some adjustments to the timelines.

Commissioner Minton asked why only 37% of the site-specific permits are being done in a timely fashion.

Mr. Schroeder responded the site-specific permits normally pose more complex issues but he is not sure of specific reasons for the delays in this area. He noted the permitting efficiencies need to be evaluated to see where most of the time is being spent. One issue could be that most of the comments received by staff are on the site-specific permits, which takes longer to work through.

Commissioner Minton noted there are not that many site-specific permits issued in comparison to the other permits. A rather large percentage of these permits took over a year to be issued. Commissioner Minton noted he is surprised that staff is falling this far behind on one type of permit.

Mr. Schroeder replied the site-specific operating permits are where the limits are placed and that is usually the biggest point of contention with respect to the permits issued. These permits generally receive most of the comments, objections and appeals, which take a lot of staff time to resolve.

Chairman Herrmann asked if the review time would also include the time of the applicants appealing to the commission.

Mr. Schroeder noted it would.

Commissioner Minton stated the graph doesn't address that issue.

Mr. Schroeder replied there are other circumstances such as an EPA interim objection to a permit where staff has to cease review and resolve that with EPA before moving forward. There are some cases where a TMDL analysis may have to be conducted before the review can be finalized.

Commissioner Minton noted there is not a mechanism available to track and show a definitive reason why there is a delay.

Mr. Schroeder responded that is correct. A system is being designed where staff can look at the interim stages of permit review and determine where most of the time is being spent. Each step of the permit review is being tracked to see how much time it takes to move through each step. Without more reliable data entry, and without the regions and other permit writing staff understanding the system, the data is not reliable to produce a good report.

Chairman Herrmann noted he thought it would be appropriate to delay action on setting any timelines until there is better information available.

Mr. Schroeder stated the statute states that staff should report to the commission on a semi-annual basis. He noted staff plans to come back to the commission in July and report progress with the permit efficiency efforts. At that time the database should provide more reliable data to be presented to the commission.

Commissioner Minton asked if it will be mid summer before any kind of process will be in place to better identify where the problems are.

Mr. Schroeder responded there are a number of permitting efficiency efforts that are currently being implemented and more to be in place soon. Staff is tracking the progress of each one of these along the way and the effects in terms of whether it's shortening the timelines.

Commissioner Minton noted he would prefer an update possibly every three months rather than waiting until July to find out that there are still problems.

Chairman Herrmann suggested a report with some meaningful information at the February meeting.

Robert Brundage noted the graph contains some data that could be rather old and if you look at the graph alone, it would look like the department is losing half of its fees. He noted Mr. Schroeder noted at the last meeting that he was not aware of any permit reviews that had exceed 180 days but that does not agree with the graph. Mr. Brundage stated the graph needs to be updated before making any decisions on changing the review timelines. He recommended the commission not look at construction, general and site-specific permit categories. Mr. Brundage noted when he participated on the permit efficiencies workgroup, there was a discussion about the many different types of permits. These can be broken down into a lot of different subcategories and that is what he envisioned when Senate Bill 741 was written. He recommended the department not look at just the broad categories but also all the subcategories to make the data more useful.

Mr. Schroeder noted he agrees and proposed that when this is brought back to the commission in February, information be presented that follows staff's interpretation of how the timelines are to be applied. The permits could be further broken down into more categories.

Chairman Herrmann stated the information might also include those where appeals have been filed.

Mr. Brundage commented that the air program also gets fees from permitting and they issue their permits on time over 99% of the time. He noted to be fair to Phil, their reviews appear to be easier.

Chairman Herrmann noted he does not believe the air program has the complexity that the water program has.

Commissioner Minton noted another item that would be identifiable if broken down as discussed will demonstrate if more staff time needs to be shifted from one site to another. This would allow the commissioners to recognize if there is a backlog that they need to be addressing. Commissioner Minton asked if 25% of the money is lost if 180 days are exceeded if the permits are under appeal.

Mr. Schroeder noted he is not sure how the appeal process affects the timelines. He asked that legal council take a look at this issue.

Commissioner Minton noted the agency could lose a significant amount of revenue because of this.

Mr. Schroeder noted that's correct.

Mr. Brundage stated he doesn't understand how appealed permits can cause an extension of the 180 days.

Chairman Herrmann noted he believes if a permit is under appeal, the old permit goes back into effect until the appeal is resolved.

Ms. Neff stated once the permit is issued, the applicant has 30 days to appeal from the new permit. Unless the commission stays the entire permit, it's the new permit that is in full force and effect. For all conditions that are stayed, if you had an old permit, you go back to the old permit terms, and then if there was no permit at all, that particular term will not be in effect. Ms. Neff noted she has always interpreted unless the entire permit is stayed, you are operating under the new permit and the 180 days is met the date that it's issued.

Chairman Herrmann stated if effluent limitations are placed in a new permit and an appeal is requested of those conditions, you can't say that the permittee has to operate under those more restrictive requirements of the new permit until the appeal is resolved.

Ms. Neff responded a stay is granted which means it would be in effect but for the stay granted by the commission and that's why it's in effect. The commission has to take the affirmative action of granting a stay. If it were automatic, there would be problems with saying that the new permit is in effect. Since it's not automatic, we can rely on saying the permit is in effect. This lets us rely on the permit being issued the date the department mails it out. It's then up to the permittee to file an appeal or not.

Chairman Herrmann asked if the graph would not be modified quite a bit if that were taken into consideration in its preparation.

Mr. Schroeder responded he did not think so because the percentage of the permits represented by this graph that have been appealed is probably fairly low. He noted staff will look at this and clearly indicate in the February report which ones are under appeal.

Mr. Brundage stated he has had several discussions with Phil about the computer tracking system, which is less than ideal. He noted the department and commission are at a severe disadvantage to make informed decisions without a major upgrade to their computer tracking system. Staff does not currently have any information on these interim dates and at the last commission meeting, Phil did not have the benefit of a computer program where he can punch a button and get a report of all permits over 180 days. Mr. Brundage stated he knows of at least eight permits that are over 180 days now without receiving a refund. This in large part is due to the fact that staff is using a computer system that does not provide the information that they need. If the computer system is not upgraded, the reports made to the commission are going to be only as good as the data that goes into the computer.

Mr. Schroeder responded any help at all would be welcome. He noted he would like to show the program to Mr. Brundage and possibly get some ideas from him on how to improve it. Mr. Schroeder stated this program was developed at the division rather than program level and his influence on how the system is designed is limited, however, the division is pretty open to ideas to satisfy the needs of the program. Staff has been working with the division to better define the interim steps and trying to get these reports developed so data can be provided to help manage the permits. Mr. Schroeder noted staff has been asked to look at the permits they review and to look for any instances where a timeline might be exceeded so refunds can be processed. Staff has identified a few at this point. If others exist, staff should be notified so they can review the files to see if the timelines were exceeded so the refund process can begin.

Chairman Herrmann asked if these permits are being prepared in the regional offices as well as the central office.

Mr. Schroeder responded more than half are prepared initially in the regional offices.

Chairman Herrmann noted that is an improvement. He asked about the status of contracting for review of permit applications.

Mr. Schroeder responded the contractors are producing more and more work every day and are helping to reduce the backlog. The consultants are currently working on the backlog of applications, many of which were received before the timelines came into effect. Once the backlog is reduced, staff would like them to work on current permit reviews in order to further reduce the time to process incoming applications.

Chairman Herrmann stated those are two fairly recent improvements that would not be reflected in this graph.

Commissioner Minton asked if the computer system is able to track what is occurring in the regional offices.

Mr. Schroeder noted it does. Regional staff enter data into the Permit Action Management System as central office staff do. Once the application is transmitted to the central office, then central office staff takes over the data entry.

Commissioner Minton noted it's obvious the system can stand some upgrading. Also, the storm water regulations will bring about 5,000 permits the first year and another 1,000 following that. If all of those are falling under one of those three categories, the backlog is going to drag the system down if it does not get streamlined.

Mr. Schroeder noted a lot of things are being put in place to be able to handle that workload when it comes. Having the consultants on board to help with this effort is one of the main

aspects of this. A new type of general permit, to be offered over the counter, is being looked at to streamline the bulk of those 5,000 permits that will need to be issued.

Chairman Herrmann requested a good update on streamlining actions that have been taken and further explanation on why some permits are taking so long.

Commissioner Hegi asked if the timelines could be changed at any time.

Ms. Neff noted she thought they could be changed any time the commission wants to. The item would have to be put on a commission meeting agenda and a public vote taken.

Mr. Schroeder noted if the commission wanted to change the timelines, staff could assist in promulgating rules for shorter timelines than what is prescribed by statute.

Ms. Neff stated the statute gives the commission the statutory authority to change the timelines but the only good way to let the public know would be through the rulemaking process.

Commissioner Minton stated the commission has considered the statutory timelines prior to December 31, 2001 and moved that **staff be given direction to update the commission on the improvements to the process at its February meeting and continuing thereafter every other meeting**; seconded by Commissioner Hegi and unanimously passed.

The conference call was adjourned at approximately 2:40 p.m.